

Small Business Impact Questionnaire

The following questions pertain to how the changes in the Nevada Administrative Code presented in the enclosure will affect your business. If it is determined that the proposed regulation is likely to impose a direct and significant economic burden upon a small business, or directly restrict the formation, operation or expansion of a small business, then the agency will take any or all of the following actions:

1. Insofar as practicable, consult with owners and officers of affected small businesses,
2. Consider methods to reduce the impact of the proposed regulation, and
3. Prepare a small business impact statement and make copies of the statement available to the public at the workshop conducted and the public hearing held pursuant to NRS 233B.061.

Please answer each of the questions that apply and add any qualifying remarks that may help us to understand your position. **Mail, fax or scan and email your completed form so it is received by the Division on or prior to 5:00 PM on December 3, 2013 to:**

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Medical Marijuana Program
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Your Name Shane A. Johnson, M.D; (858) 354-7853; shane@hwwellness.com; PLEASE
CALL or email if I can offer clarification of any of this response
Organization dba HW Wellness
Date December 3, 2013

NRS 233B.0382 "Small Business Defined." "Small business" means a business conducted for profit, which employs fewer than 150 full-time or part-time employees.

1. How many employees are currently employed by your business? Currently 5, Growing to ~40 assuming we obtain desired licenses

If more than 150, you will not need to answer the rest of the questions. Please MAIL, FAX or EMAIL the questionnaire to the above address. If less than 150, please continue with the remaining questions.

2. Will a specific regulation have an adverse economic effect upon your business? If so, please indicate the estimated dollar amount(s) you believe the adopted regulations will cost you over one calendar year with a brief explanation as to how the dollar amount was calculated.

Yes XXX No Explain: Please list each regulation and explain the impact.

- NAC 453A Sections 25 and 48.5: Given that many of the proposed application fees are intended to support the cost of background checks, application review, etc., IF A GROUP / ENTITY applies for multiple licenses, much of the background check and review will be duplicative between license applications. Specifically, my group intends to apply for a minimum of 2 dispensary licenses, a cultivation license, and an edible/infused products license. To pay the up-front fee of \$5000 per application, and then the associated license issuance fees IN FULL for each application, leads to significant fees (easily in excess of \$15K) that are not truly justified given that our team only needs to be vetted / qualified ONCE.
- NAC 453A Section 36.1: Some entities may want to change their structure. For instance, from a business perspective, it may be desirable to start as an LLC, but switch to an S Corp. Note that in this particular example, there is a federally mandated March 15th deadline in a given year to elect S Corp Status, so the state needs to contemplate that changing organization types may need to take place OUTSIDE of the 10 day application period, depending on WHEN the 10 day application period is set each year. It would be appropriate for Section 36 to contemplate entities changing their organization type. Not facilitating organizations being able to change their organization type could easily cost a business \$10s or even \$100s of thousands of dollars due to different tax treatments at the federal level.
- Section 36.3: Requirement of a report of audit. In my experience, audits cost anywhere from \$15K to \$50K for small businesses. This is a significant and undo burden, especially for a startup organization. I would suggest eliminating any request for audit for the first 2 taxable years at a minimum. It might also make sense to establish revenue threshold(s) for the audit requirement and/or more infrequent (e.g., NOT ANNUAL) audits thereafter.
- NAC 453A Section 41: It is difficult to put a hard dollar cost on this, but there does not appear to be any sort of allowance for owners or employees with particular skill sets to obtain an agent card that would allow them to provide services at MULTIPLE establishments of different types (I do read it as saying that a given agent could work at ANY dispensary if they have the 'dispensary' agent card). IF THIS IS TRULY THE INTENT, it could be devastating! Again, my group anticipates owning dispensaries, cultivation, and medibles facilities... as owners / operators we need to be able to enter all of them to provide services. And I can easily envision employees who may have relevant skills for 2 or more establishment types. So, hopefully there will be a process by which agents can obtain registration cards that enable them to provide services at 2 or more establishment types? Furthermore, from a business efficiency, public exposure, and safety/security perspective it is logical to co-locate a medibles / infused products manufacturing facility WITH the cultivation facility. Ideally employees would share a common entrance (better security!), common break rooms and bathrooms (more efficient!), etc. So again, this begets the issue of agent cards if they work as a cultivator and or medibles employee in a building that houses BOTH business. I can go on and on about why this makes sense and is in everyone's best interest.
- NAC 453A Section 51: If we cultivate our own product, and make edible or infused products in a co-located facility, it certainly adds cost and time to test the shake / leaves, etc. prior to utilizing to make, for instance, a concentrate. While this testing can certainly be done, it

seems to add an artificial 'step' that costs time and money, and is generally unnecessary given that the final edibles and infused products must be tested in any case before being transferred to a dispensary.

- NAC 453A Section 70: We plan to grow organically (not hydroponic without pesticides, but true organic, in soil) based on industry standards. However, Section 70 calls for certification, "in a manner consistent with the national organic standards established by the USDA." The USDA cannot certify us because the USDA is a federal agency, and medical marijuana is illegal federally. Will the NV Dept. of Agriculture certify us? Even with a local certifying agency the cost of certification (based on web searches and conversations) typically ranges from \$2-5K/ year. If we have to bring in a certifying organization from outside the state, the costs will only be higher. Obviously this cost (and any of the others touched on in this document) will end up being passed on to consumers. Is this really what NV wants? A high cost medical marijuana program? I do not think, in the early phases of this program, that organic certification should be required UNLESS a state agency (such as the Nevada Dept of Agriculture) can do the certification, in which case I am 100% supportive.
- NAC 453A Section 72: As noted above, if a group desires (as we do) to do both cultivation and edible / infused marijuana products, it makes tremendous business and security sense to co-locate those facilities. Section 72 should be amended to reflect that if 2 such businesses are owned and operated by the same group / entity, that officers, board members, and agents can utilize a common entry, share common spaces (break room, bathrooms), and to extent licensed to do so, work in either business establishment.
- NAC 453A Section 73: I don't believe you are trying to exclude establishments from using more neutral packaging such as glass, but there is no mention of such in this section. Please call out that glass, etc., are authorized (and hopefully encouraged!).
- NAC 453A Section 115: This section specifies that expiration dates for medical marijuana products must be determined by appropriate lab-based stability testing. THIS COULD MAKE THIS BUSINESS IMPOSSIBLE! Given my background in the biotechnology world, I fully understand that lab based stability testing will run \$10s if not \$100s of thousands of dollars PER PRODUCT. Are the "independent testing labs" supposed to do this testing? Are we supposed to do it as cultivators / edibles manufacturers? Even using accelerated testing protocols, it typically takes months to stability test a given product. PRACTICAL SENSE needs to come into play here! I implore you! Medical marijuana (flower) is like tobacco in a fine cigar... properly stored it can last for years, and age well! Shelf life will depend in part on how it is initially packaged (e.g., air tight container? Air or nitrogen?), and stored (temperature? Light? Humidity? Packaging?). For edible products and infused products, the primary factor will be the 'normal' shelf life of the non-cannabis ingredients. For instance, if we make a cannabis infused olive oil, the suggested expiration date or "best by" date should be whatever accompanies the olive oil itself... which may be based on knowledge NOT laboratory based stability testing. So, please clarify (or omit!) this section. Requiring true laboratory based stability testing of very small volume products is impossible from an economic perspective. It simply costs too much.
- MULTIPLE Sections: If there is no licensed independent laboratory in Northern NV, it would be a significant cost burden to our Northern NV based businesses. What can be done to ensure that at least ONE independent laboratory gets stood up in EACH of Northern and Southern NV? What if the lab takes their sweet time (they have up to 12 months) to get the business running? Are we paralyzed in that instance, paying rent, etc., with no ability to sell our medicine through dispensaries? This would be devastating financially!! It makes sense to me that there be a backup plan in place. For instance, perhaps UNR could run the tests?

Or perhaps we could sell product WITHOUT testing until such time as an independent lab is up and running in Northern NV? Or perhaps we could do our own testing until such time as an independent lab is up and running in Northern NV? I believe it is imperative for the Division to put some sort of contingency plan in place!!

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3. Will the regulation(s) have any beneficial effect upon your business? If so, please include any cost savings you believe the adopted regulations will save you over one calendar year with an estimated dollar amount if applicable.

Yes _____ No _____

Explain:

4. Do you anticipate any indirect adverse effects upon your business?

Yes XXX No _____

Explain:

- NAC 453A Sections 25: From this section it appears that if a group / entity wishes to apply for multiple licenses, as permitted by the legislation, that a separate application must be completed for EACH license. If the Division were open to it, it would be more efficient (and kill fewer trees!) to fill out one longer application covering each of the proposed licenses.
- NAC 453A Section 33: As we (and I suspect most other) applicants will not have a fully binding lease, nor FULL access to the buildings that we wish to occupy until such time as we obtain licenses, it would be helpful if the Division could spell out some sort of process to, “work with the applicant and landlords to find mutually agreeable time(s) for inspection(s) as required to review the application.” Without some process that involves working with applicants and landlords, the application process will be biased toward only those applicants who already own their own building.
- NAC 453A Section 35.3: As these businesses get stood up, it will become imperative in the future to create a mechanism to transfer ownership of the establishment and the accompanying registration certificate, obviously with approval by the Division of the new owner(s). This could work very much like the process by which casinos in the state of NV are sold, with sign-off by the overseeing body.
- NAC 453A Section 57.3(d3): When you state that you want to reporting to include the “origin” of the marijuana seeds or cuttings, can you please clarify? It seems that we are obligated to obtain seeds or cuttings from existing registry card holders, do we need to identify the individual? It just seems that this is likely to be a sensitive topic, and may lead to LOWER QUALITY options in terms of strains of medical marijuana, etc., if full reporting of individual names, etc., is required.

- **NRS 453A.350:** The way this is written, I believe it is perhaps intended to apply only to dispensaries? It does not make sense to require an edible marijuana / infused products manufacturing facility to be located in a SEPARATE building from the cultivation facility. There are tremendous business synergies, not to mention a less public presence and lower security risks, by co-locating these facilities if they are owned by the same group. ALSO, this provision specifies commercial or industrial zones only. What about agricultural zones for the cultivation (and possibly edibles) establishments?
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5. Do you anticipate any indirect beneficial effects upon your business?

Yes XXX No _____

- **NRS 453A.105:** Inclusion of greenhouses as permissible cultivation facilities will be of tremendous benefit, as we will be able to leverage sunlight to grow quality medicine, as opposed to using expensive indoor lighting solutions. WOULD BE TREMENDOUS if you could consider authorizing agricultural zoning (currently limited to commercial and industrial) for cultivation facilities, as this would enable cultivators to be even more environmentally friendly, organic, etc.

Explain:

6. *OTHER COMMENTS re: NAC 453A Regulations and also the revised NRS 453A Statutes*

- NAC 453A Sections 23-24: These sections do not address the distinct scenario of individuals owning equity in an umbrella organization, which in turn owns 1 or more wholly owned subsidiaries (that actually hold the MMJ business licenses). I suspect that for clarity if the entity with the license is owned 100% by another entity, that you will want sections 23-24 to apply to all 5% or more owners of the parent / umbrella entity?
- NAC 453A Section 50: I believe you may be referring here to names / logos / signs / advertisements placed PHYSICALLY at the location of the establishment, which makes sense, but if this is true it should be clarified. I could also read section 50 as meaning that every time I want to change a website, or sent out a 'tweet' on twitter, or place an ad in an industry journal or online in an appropriate venue, or anything of that sort, that we would need to first obtain approval by the Administrator of the division.... And I have a hard time believing that you want to be bothered for every little thing like that!! So Please clarify!!
- NAC 453A Section 57.3(b): When acquiring medical marijuana from a registry card holder, it is not clear when or how the laboratory testing is to be done. Can you please clarify?
- NAC 453A Section 58.2 I THINK THERE IS A TYPO here!? It sounds as though we can't transport more than 10 oz at any one time to any one patient... but given the 2.5 oz per 14 day limit this doesn't make sense. Do you mean that no more than 10 oz can be transported at any one time in a delivery run to MULTIPLE patients?
- NAC 453A Section 76: reading this, it seems as though a cultivation facility could pre-package products in retail-size quantities for eventual sale, but it doesn't spell this out. Can you please confirm this is true? It would be beneficial to package at the cultivation facility

level to ensure optimum product freshness, etc.

- NAC 453A Section 91: Specifies that products can be manually cleaned/sanitized, and if larger can be cleaned using a warewashing machine or alternative equipment. I believe it is simple oversight not to “allow” a warewashing machine or alternative equipment to be utilized to clean smaller equipment and utensils? Please clarify...
- NAC 453A Section 121: Please clarify batch vs. lot... e.g., provide greater clarity on how many sample tests need to be run per unit volume of marijuana.
- **NRS 453A.200.3** per this section, it is illegal for a registry card holder to possess or produce more than 2.5 oz in any one 14 day period. If a dispensary is able to purchase from existing registry card holders, does this explicitly or implicitly mean that a dispensary cannot purchase more than 2.5 oz from any card holder? (Since the card holder can only sell to a dispensary one time?). IF THIS IS THE CASE, please spell it out as such. Based on other aspects of legislation it would seem that the best way to open a dispensary in a short period of time following obtaining a license would be to acquire medical marijuana from existing registry card holders (since growing marijuana in a proper cultivation facility will take time). However, if the maximum purchase from a given registry card holder is limited to 2.5 oz this makes no sense: one cannot stock a dispensary with purchases this small, especially once testing is taken into account. If, on the other hand, a registry card holder can grow and sell several POUNDS of medical marijuana ONE TIME to a dispensary, then this provides an avenue for the dispensary to open its doors relatively quickly after obtaining license approval from the state. Please clarify.
- **NRS 453A.322.3.2.VII:** This provision (to provide name, address, date of birth of each proposed employee at the time of application) makes sense IF AND ONLY IF it is limited to key employees / managers. It is nonsensical to think that we can get people to commit to work for us MONTHS before we would actually be in a position to have a license in hand and actually begin to pay them, which is what you’re asking for.... I DO THINK that these data should be required of all employees in the process of obtaining agent cards, AFTER licenses have been obtained.
- **NRS 453A.600:** I’m not sure of the status of the University of Nevada School of Medicine research program regarding the medical use of marijuana in the care and treatment of appropriate patients, but I / we would be very interested in discussing how we might be able to support this research. Speaking individually, with my background in medicine and biotechnology, ongoing clinical research regarding medical marijuana is an area of tremendous interest.